IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	
	)	Criminal No. 1:07CR209
v.	)	
	)	Hon. T.S. Ellis, III
WILLIAM J. JEFFERSON,	)	
	)	Motion Hearing: Oct. 12, 2007
Defendant.	)	

GOVERNMENT'S OPPOSITION TO DEFENDANT'S
MOTION TO DISMISS CONSPIRACY COUNTS ONE & TWO

The United States, by and through undersigned counsel, files this opposition to Defendant Jefferson's motion to dismiss the two conspiracy counts of the Indictment, Counts One and Two. Contrary to Defendant Jefferson's motion, those two conspiracies are properly pled, include appropriate overt acts, and will be supported at trial with ample evidence. The principal infirmity asserted by Defendant Jefferson in his motion about each of these conspiracies that his conduct resulted in more conspiracies than just these two, is an issue of fact for the jury to decide. Accordingly, the Court should deny this motion.

BACKGROUND

On June 4, 2007, a federal grand jury sitting in Alexandria, Virginia, in the Eastern District of Virginia, returned a sixteen-count Indictment against Defendant Jefferson. The first two counts of that Indictment charged Defendant Jefferson with conspiring to violate multiple laws of the United States, in violation of Title 18, United States Code, Section 371. As alleged in the Indictment, the purpose of both conspiracies was essentially the same:

> To provide for the unjust enrichment of Defendant JEFFERSON and his family members by corruptly seeking, soliciting, and directing that things of value be paid to him and his family members in return for Defendant JEFFERSON's performance of official acts.
>
> To use the Office of Congressman WILLIAM J. JEFFERSON, including the congressional staff members employed therein, to perform official acts to advance the interests of the businesses and persons who had agreed to pay things of value to Defendant JEFFERSON and his family members.
>
> To conceal the illegal nature of Defendant JEFFERSON's solicitations for, and receipt of, various things of value through the preparation of misleading written agreements, the use of nominee companies, and the omission of material facts concerning the financial benefits that were sought on behalf of, and received by, Defendant JEFFERSON and his family members, all to ensure the continued existence and success of the conspiracy.

See Indictment ¶¶ 41-44, 142-44 (hereinafter "Ind.¶ ___"). As the Indictment reflects, these conspiracies also shared a similar manner and means, namely, that Defendant Jefferson discussed providing official assistance to businesspersons and their companies as a Member of the United States House of Representatives, after which Defendant Jefferson and his co-conspirators would do the following:

> . . . Defendant JEFFERSON sought things of value for himself and his family members in return for providing official assistance to promote those business endeavors. The things of value Defendant JEFFERSON sought in return for providing his official assistance included monthly fees or retainers, consulting fees, percentage shares of revenue and profit, flat fees per item sold, and stock ownership in the companies seeking his official assistance.
>
> Defendant JEFFERSON sought to and did conceal his and his family members' expected or actual receipt of things of value by directing congressional staff members, family members, and others to form nominee companies that entered into business agreements to receive the things of value sought by Defendant JEFFERSON while not

> referencing him or disclosing his involvement in obtaining the agreements.
>
> While seeking things of value, Defendant JEFFERSON typically required that the agreements with the nominee companies be reduced to writing to make them appear to be lawful agreements for professional and legitimate services when, in fact, the companies and businesspersons were giving things of value to Defendant JEFFERSON and his designees in return for official acts to be performed by Defendant JEFFERSON.
>
> In return for things of value, Defendant JEFFERSON agreed to perform and did perform a pattern of official acts to promote and advance the business interests of these companies and businesspersons in West Africa and elsewhere.
>
> Defendant JEFFERSON failed to disclose his and his family's financial interests in these business ventures by omitting this material information from travel and financial disclosure forms required to be filed by the Rules of the United States House of Representatives and, in some cases, by simply failing to make any of the required filings.
>
> Defendant JEFFERSON failed to disclose to United States and foreign government officials his and his family's financial interests in the business ventures he was officially promoting in order to give the false impression that Defendant JEFFERSON was merely acting as an impartial public servant promoting United States business interests abroad.

Ind. ¶¶ 46–52, 146-51. The only significant difference in the manner and means was that in the first conspiracy Defendant Jefferson also sought to "offer, promise, and make bribe payments to foreign officials of the Federal Republic of Nigeria, including Nigerian Official A, in order to advance the business interests of the Nigerian Joint Venture, its members and stockholders, and others who had agreed to pay Defendant JEFFERSON and his family things of value in return for his official acts." Ind. ¶ 44. As alleged in the Indictment, in seeking to achieve this goal of the conspiracy in Count One:

> Defendant JEFFERSON, Nigerian Businessperson B, and others agreed that bribes would be paid, as needed, to various Nigerian government officials if deemed necessary to the success of the Nigerian Joint Venture. Defendant JEFFERSON was responsible for negotiating, offering, and delivering the payment of bribes to Nigerian Official A to induce Nigerian Official A to use his position to assist in securing approvals necessary to the success of the Nigerian Joint Venture. Nigerian Businessperson B was responsible for the payment of bribes to lower ranking Nigerian government officials to ensure the success of the Nigerian Joint Venture.

Ind. ¶ 52.

Although the manner and means employed in the two conspiracies were similar, each conspiracy was discrete in that there was limited overlap of family members, businesspersons, and companies. As such, the conduct was appropriately charged as two conspiracies in the Indictment. Defendant Jefferson now argues that these two conspiracies should be broken up into a series of separate mini-conspiracies. Neither the facts nor the law warrant such a result.

DISCUSSION

Although captioned as a motion to dismiss, Defendant Jefferson's motion principally asks this Court to sever these two conspiracy counts into at least eight separate mini-conspiracies. But as the allegations in the Indictment demonstrate, each of these two conspiracies reflects schemes with common goals and methods and an overlap in key actors and entities. In short, nothing about the conspiracies charged defies commonsense or strains credulity. To the contrary, as the Indictment details, the conspiracies in Counts One and Two evolved in logical, coherent manners, and they are more than adequately pled and will be supported at trial with proof beyond a reasonable doubt.

Moreover, besides the fact that the conspiracy counts are pled sufficiently and supported by sufficient evidence, the Fourth Circuit has repeatedly held that whether or not the evidence supports one or many conspiracies is an issue of fact to be decided by a jury and for which Defendant

Jefferson can seek an appropriate jury instruction, if deemed justified and proper by this Court. Accordingly, this issue is premature at best and should be denied.

I. Applicable Standard of Review for a Motion to Dismiss

Unlike the motion filed by Defendant Jefferson here, a true motion to dismiss tests whether an indictment sufficiently charges an offense. *See United States v. Brandon*, 150 F. Supp. 2d 883, 884 (E.D.Va. 2001), *aff'd*, 298 F.3d 307 (4th Cir. 2002) (citing *United States v. Sampson*, 371 U.S. 75, 78-79 (1962)). An indictment must contain "a plain, concise and definite written statement of the essential facts constituting the offense charged." *Id*. (citing Fed. R. Crim. P. 7(c)(1)). Where an indictment tracks the statutory language and specifies the nature of the criminal activity, it is sufficiently specific to withstand a motion to dismiss. *United States v. Carr*, 582 F.2d 242, 244 (2d Cir. 1978); *Summers v. United States*, 11 F.2d 583, 584 (4th Cir. 1926); *United States v. Critzer*, 951 F.2d 306, 307 (11th Cir. 1992) ("There is no summary judgment procedure in criminal cases. Nor do the rules provide for a pre-trial determination of sufficiency of the evidence. [] The sufficiency of a criminal indictment is determined from its face. The indictment is sufficient if it charges in the language of the statute."). Here, both Counts One and Two track the statutory language properly and appropriately specify the nature of the criminal activity. Accordingly, Counts One and Two, as detailed above and as reflected in the Indictment, sufficiently charge Defendant Jefferson with conspiring with a number of other persons, named and unnamed, to violate certain laws of the United States.

II. The Allegations Contained in Count One Are Sufficient to Establish a Violation of Title 18, United States Code, Section 371

In the instant case, Count One of the Indictment alleges a conspiracy to violate laws of the United States, in violation of Title 18, United States Code, Section 371. Section 371 provides:

> If two or more persons conspire . . . to commit any offense against the United States . . . and one or more of such persons do any act to effect the object of the conspiracy, each [shall be guilty of an offense against the United States].

As the Indictment reflects, the conspiracy in Count One charges Defendant Jefferson with seeking to commit three offenses against the United States: (a) soliciting bribes (18 U.S.C. § 201(b)(2)(A)); (b) depriving citizens and the United States House of Representatives of Defendant Jefferson's honest services by wire fraud (18 U.S.C. §§ 1343 and 1346); and (c) the bribery of a foreign official (15 U.S.C. § 78dd-2(a)). Ind. ¶ 40. This offense was charged as a single conspiracy with three objects because the facts and evidence that will be presented at trial will show that each of these objects was present in a single conspiracy with one over-arching goal: the pursuit of telecommunications business in West Africa, principally Nigeria, using iGate's technology through the use of Defendant Jefferson's status and influence as a Member of Congress with various United States and foreign officials. *United States v. Bolden*, 325 F.3d 471, 492 (4th Cir. 2003) ("Courts have uniformly upheld multiple-object conspiracies, and they have consistently concluded that a guilty verdict must be sustained if the evidence shows that the conspiracy furthered any one of the objects alleged."); *see also Braverman v. United States*, 317 U.S. 49, 52 (1942) ("[A] single agreement to commit an offense does not become several conspiracies because it continues over a period of time, and that there may be such a single continuing agreement to commit several offenses.").

Count One not only contains the appropriate statutory charging language, it provides a detailed description of the nature and purpose of the conspiracy, the manner and means by which Defendant Jefferson and others sought to carry out the conspiracy, and more than eighty overt acts undertaken in furtherance of it. Ind. ¶¶ 41-44, 45-52, 53-139. Count One also lists by name two of the co-conspirators involved in the conspiracy who had already pleaded guilty by the time the Indictment was returned, Vernon Jackson and Brett Pfeffer. *See* Ind. ¶ 40. Besides these co-conspirators, the manner and means and overt acts sections reflect numerous other co-conspirators known to the grand jury: Family Member 1, Nigerian Businessperson A, Nigerian Businessperson B, Nigerian Official A, and Nigerian Official A's Spouse. *See, e.g. ,* Ind. ¶¶ 55, 63, 96, 101-102, 122. To the extent Defendant Jefferson was unable to identify those co-conspirators, the government provided an explicit list of those co-conspirators to him.[1] Under these circumstances, Count One clearly alleges a sufficient conspiracy. *See Carr*, 582 F.2d at 244; *Summers*, 11 F.2d at 584.

Nevertheless, Defendant Jefferson claims that "nothing in the indictment suggests that anyone was involved in the alleged FCPA[2] violation other than CW" and that Count One "alleges

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[1] When the grand jury returned its Indictment, pseudonyms were used to refer to unindicted co-conspirators and other third parties. *See Finn v. Schiller*, 72 F.3d 1182, 1189 (4th Cir. 1996) (criticizing the use of names of unindicted individuals in court pleadings); *U.S. Attorney's Manual* § 9-11.130 (limitation on naming unindicted co-conspirators and third parties in indictment), § 9-27.760 (same policy applied to pleadings and other court filings). Defendant Jefferson, however, publicly filed the government's non-public letter, in which a number of unindicted co-conspirators in Counts One and Two were identified, and he then discussed many of those same names in his pleading. Nevertheless, given the case law and Justice Department policies in the *U.S. Attorney's Manual*, the government is continuing to use pseudonyms. If the Court would prefer that the government use the true names of such persons and businesses to reduce any unintended confusion, it will certainly do so. Until then, however, the government has organized the persons and businesses in this pleading in the same manner that they are referred to the Indictment.

[2] Foreign Corrupt Practices Act, 15 U.S.C. § 78dd-2, *et seq*.

two schemes, not one." Def.'s Mem. at 2, 9. In short, Defendant Jefferson attempts to argue that: (1) the conspiracy to violate the FCPA was merely between Defendant Jefferson and CW, and thus there was no conspiracy; and (2) there were multiple conspiracies charged in Count One. In making these two arguments, however, Defendant Jefferson ignores the allegations as pled, which plainly indicate that there were co-conspirators absent CW, and he tries to challenge the quality and quantity of the evidence, which is inappropriate at this juncture.

As an initial matter, Count One explicitly alleges that with regard to the aspect of the scheme involving the bribery of foreign officials, "Defendant JEFFERSON, Nigerian Businessperson B, and others agreed that bribes would be paid, as needed, to various Nigerian government officials if deemed necessary to the success of the Nigerian Joint Venture." Ind. ¶ 52. This allegation alone defeats Defendant Jefferson's legal challenge. But the allegations in Count One go further by reciting a number of overt acts regarding this aspect of the conspiracy. For example, the overt acts reflect that Nigerian Businessperson B implored Vernon Jackson to have Defendant Jefferson "move in and move in fast" with Nigerian Official A. Ind. ¶ 105. This was *after* Defendant Jefferson had already coordinated with Nigerian Businessperson B about the payment of bribes to foreign officials, as Defendant Jefferson informed CW that Nigerian Businessperson B had "a lot of folks to pay off." Ind. ¶ 96.

The allegations in Paragraph 52 are not limited to just Defendant Jefferson and Nigerian Businessperson B, as they indicate there are "others." *See* Ind. ¶ 52. For example, as the overt acts indicate, Defendant Jefferson and Nigerian Official A's Spouse had a meeting at which Defendant Jefferson offered to bribe Nigerian Official A, and after the meeting, Defendant Jefferson had financial projections delivered to Nigerian Official A's Spouse for her to pass onto Nigerian Official

A, which she did. *See* Ind. ¶¶ 101, 107-08; *see also* ¶ 102 (Defendant Jefferson discussed with CW using Nigerian Official A's Spouse's charity to funnel bribe payments). After providing these materials through Nigerian Official A's Spouse, Defendant Jefferson offered -- and Nigerian Official A agreed to accept -- bribes to ensure that iGate's equipment could be located at facilities run by a Nigerian government-controlled telephone company. Ind. ¶¶ 122, 123, 125. At trial, the government intends to offer further evidence to support the existence of the overall conspiracy, including additional evidence regarding the bribery of foreign officials.

In spite of this, Defendant Jefferson dismisses the allegation in Paragraph 52 as "boilerplate" and challenges the sufficiency of the evidence demonstrating the existence of other co-conspirators, relying on what he suggests is a lack of overt acts laying out additional evidence about the involvement of the other co-conspirators. Def.'s Mem. at 9. The allegation in Paragraph 52, however, is not boilerplate in the least. It specifically describes Defendant Jefferson's agreement to the payments of bribes, as needed, to foreign officials, including Nigerian Official A, and describes the involvement of another co-conspirator. Moreover, even if the allegations were generic, it would still be sufficiently pled as a matter of law. *Carr*, 582 F.2d at 244 (where indictment tracks statutory language and specifies nature of criminal activity, it is sufficiently specific to withstand motion to dismiss). In addition, Defendant Jefferson's evidentiary arguments, which purport to interpret the quality and try to attack the quantity of the overt acts alleged in Count One, are premature. *See Critzer*, 951 F.2d at 307 (rules do not "provide for a pre-trial determination of the sufficiency of the evidence"). Indeed, federal courts, including the Fourth Circuit, have uniformly recognized that "when seeking to prove a conspiracy, the government is permitted to present evidence of acts committed in furtherance of the conspiracy even though they are not all specifically

described in the indictment." *United States v. Janati*, 374 F.2d 263, 270 (4th Cir. 2004) (reversing trial court ruling that government is limited during its case-in-chief on conspiracy count to proving overt acts alleged).[3] In fact, the government may even prove the agreement entirely by circumstantial evidence. *See United States v. Burgos*, 94 F.3d 849, 858 (4th Cir. 1996); *Glasser v. United States*, 315 U.S. 60, 80 (1942) ("Participation in a criminal conspiracy need not be proved by direct evidence; a common purpose and plan may be inferred from a development and a collocation of circumstances."); *see also United States v. Collazo*, 732 F.2d 1200, 1205 (4th Cir. 1984) ("To sustain [a] conspiracy conviction, there need only be a showing that the [individual] knew of the conspiracy's purpose and some action indicating his participation."); *United States v. Pleasants*, 182 F.3d 911, 1999 WL 401651, at *3 (4th Cir. 1999) ("The close family relationship among the primary conspirators certainly could suggest that [defendant] was intimately aware of the conspiracy and was a trusted participant from the beginning of the enterprise.").

The second prong of Defendant Jefferson's challenge to Count One, that is, whether the conspiracy in that count consists of multiple conspiracies, is also entirely premature. Although the government acknowledges that it bears the burden of proving that the conspiracy charged in Count

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[3] *See also United States v. Caso*, 935 F.2d 1238, 1991 WL 101559, at *8 (4th Cir. 1991) ("[T]he government is not limited to overt acts pleaded in the indictment in proving the existence and duration of a conspiracy, but may show other acts consistent with the conspiracy that occurred during its existence."); *United States v. Molovinsky*, 688 F.2d 243, 246 n.5 (4th Cir. 1982) ("The government is not limited in its proof at trial to those overt acts alleged in the indictment."); *United States v. Munoz-Franco*, 487 F.3d 25, 53 (1st Cir. 2007) (government "is not limited in its proof at trial to those overt acts alleged in the indictment"); *United States v. Powers*, 168 F.3d 741, 749 (5th Cir.1999) ("[W]here a conspiracy is charged, acts that are not alleged in the indictment may be admissible as part of the Government's proof."); *United States v. Lewis*, 759 F.2d 1316, 1344 (8th Cir.1985) ("This Court has previously held that in conspiracy cases, the government is not limited in its proof to establishing the overt acts specified in the indictment."); *United States v. Adamo*, 534 F.2d 31, 38 (3d Cir.1976) (same).

One of the Indictment is a single conspiracy, *United States v. Hines*, 717 F.2d 1481, 1489 (4th Cir. 1983), that burden is an evidentiary burden that the government must meet at trial, not in response to the instant motion. Indeed, the Fourth Circuit has repeatedly held that "[t]he question whether the evidence shows a single or multiple conspiracies is for the jury, and the finding of a single conspiracy must stand unless the evidence, taken in the light most favorable to the Government, would not allow any reasonable juror to reach such a verdict." *United States v. Bollin*, 264 F.3d 391, 405 (4th Cir. 2001) (citing *United States v. Urbanik*, 801 F.2d 692, 695 (4th Cir. 1986)); *see also United States v. Hunter*, 166 F.3d 1211, 1998 WL 887289, at *4 (4th Cir. 1998); *United States v. Harris*, 39 F.3d 1262, 1267 (4th Cir. 1994); *United States v. Banks*, 10 F.3d 1044, 1051 (4th Cir. 1993); *United States v. Crockett*, 813 F.2d 1310, 1317 (4th Cir. 1987).

The government intends to present evidence at trial that will establish beyond a reasonable doubt that the conspiracy as alleged in Count One reflects a single conspiracy. In the Fourth Circuit, generally "[a] single conspiracy exists where there is one overall agreement, or one general business venture. Whether there is a single conspiracy or multiple conspiracies depends upon the overlap of key actors, methods, and goals." *United States v. Squillacote*, 221 F.3d 542, 574 (4th Cir. 2000) (citation and internal quotation marks omitted). The evidence will show that there was a common scheme in which Defendant Jefferson solicited bribes from Jackson in exchange for undertaking official acts to promote iGate, Inc.'s business to U.S. and foreign government officials and businesspersons, and in which Defendant Jefferson further agreed to bribe foreign officials, if necessary, to promote the business of iGate and its business partners in Nigeria.

Indeed, as reflected in the Indictment, the evidence at trial will show that as part of the conspiracy, Defendant Jefferson and Family Member 1, via The ANJ Group, LLC, received from

Vernon Jackson and iGate about $456,000 in cash, 30 million shares of iGate stock, and a guarantee of 35% of any profits derived from iGate's business in Africa and 5% of capital raised.[4] Ind. ¶¶ 17, 54, 64, 86, 272(a), 272(d). Defendant Jefferson further sought and accepted from CW 1.5 million shares in CW's company, W2-IBBS, in the name of another family-controlled company. *See* Ind. ¶¶ 19, 103. Accordingly, Defendant Jefferson and Family Member 1 had a significant financial interest in the success of iGate, W2-IBBS, and W2-IBBS's joint venture with Nigerian Businessman B (and his company, Nigerian Company B) using iGate's technology. *See* Ind. ¶ 38. With Defendant Jefferson and his family's future wealth tied to the success of these companies through the ill-gotten stock received as a result of the conspiracy, Defendant Jefferson's agreement with Nigerian Businessperson B to pay bribes, as needed, to various Nigerian government officials to ensure the success of these companies and the joint venture is clearly tied into the overall scheme. *See* Ind. ¶¶ 52, 96, 100; *United States v. MacDougall*, 790 F.2d 1135, 1146 (4th Cir.1986) (evidence of interdependence can support existence of conspiracy); *United States v. Stewart*, 256 F.3d 231, 251 (4th Cir. 2001) ("[I]f the activities of a defendant charged with conspiracy facilitated the endeavors of other alleged coconspirators or facilitated the venture as a whole, evidence of interdependence is present.").

Through this evidence, as reflected in Count One, and additional evidence that will be presented at trial, the government will be able to prove that Defendant Jefferson and at least one other person knowingly and deliberately arrived at an agreement or understanding that they, and

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[4] As the Indictment alleges, Defendant Jefferson's attempted to influence government officials at the Export-Import Bank to provide a loan guarantee of approximately $40 million. Ind. ¶¶ 66, 82, 121. Had the official acts undertaken by Defendant Jefferson's been successful, iGate would have owed The ANJ Group, LLC $2 million (5% of $40 million in capital raised).

perhaps others, would violate some laws by means of some common plan or course of action as alleged in Count One. *See* 2 O'Malley, *et al.*, *Fed. Jury Practice and Instr.*, § 31.04 at 291 (5th ed. 2000). Although each co-conspirator did not necessarily know all of the other co-conspirators and all of the co-conspirators may not have been involved in each and every aspect of the conspiracy with the defendant, such evidence is not necessary to establish a conspiracy. *Id.*; *see United States v. Banks*, 10 F.3d 1044, 1054 (4th Cir.1993) ("one may be a member of a conspiracy without knowing its full scope, or all its members, and without taking part in the full range of its activities or over the whole period of its existence."); *Crockett*, 813 F.2d at 1317 (not necessary to show that each co-conspirator knew each other in order for all of them to be engaged in single conspiracy); *United States v. Heinemann*, 801 F.2d 86, 92 n.2 (2d Cir. 1986) ("There is, of course, no requirement that each co-conspirator participate in every phase of an evolving conspiracy, as long as each was aware that the conspiracy did not begin and end with his own activities."); *United States v. Celestine*, 43 Fed. Appx. 586 (4th Cir. 2002) ("a defendant can be convicted of conspiracy if the evidence shows his participation in only one level") (citing *United States v. Johnson*, 54 F.3d 1150, 1154 (4th Cir.1995)); *United States v. Friedman*, 854 F.2d 535, 562 (2d Cir.1988) ("there is no requirement that each member of a conspiracy conspire directly with every other member of the conspiracy"). *See also United States v. Gray*, 47 F.3d 1359, 1368 (4th Cir. 1995). The Supreme Court in *Blumenthal v. United States*, 332 U.S. 539, 557 (1947), explained the logic and reasoning behind this principle:

> Secrecy and concealment are essential features of successful conspiracy. The more completely they are achieved, the more successful the crime. Hence the law rightly gives room for allowing the conviction of those discovered upon showing sufficiently the essential nature of the plan and their connections with it, without

> requiring evidence of knowledge of all its details or of the participation of others. Otherwise the difficulties, not only of discovery, but of certainty in proof and of correlating proof with pleading would become insuperable, and conspirators would go free by their very ingenuity.

As such, the touchstone analysis is whether there is an "overlap of key actors, methods, and goals." *United States v. Strickland*, 245 F.3d 368, 385 (4th Cir. 2001). In fact, contrary to Defendant Jefferson's claim that there are multiple conspiracies in Count One because a co-conspirator may not have been aware of some actions taken by Defendant Jefferson in furtherance of the conspiracy with another co-conspirator, the law does not require such proof in order to establish a single conspiracy:

> A single conspiracy may involve various people at differing levels and may involve numerous transactions which are conducted over some period of time and at various places. In order to establish a single conspiracy, however, the government need not prove that an alleged co-conspirator knew each of the other alleged members of the conspiracy nor need it establish that an alleged co-conspirator was aware of each of the transactions alleged in the indictment.

2 O'Malley, *et al.*, *Fed. Jury Practice and Instr.*, § 31.09 at 343. Indeed, in arriving at its decision, a jury is typically instructed to consider the length of time the alleged conspiracy existed, the mutual dependence or assistance between various persons alleged to have been its members, and the complexity of the goals or objectives shown. *Id*.

In this conspiracy, almost all of the members of the conspiracy knew each other, or at least knew of each other, and many had significant business, political, or familial relationships with each other. In fact, during the course of the conspiracy, Defendant Jefferson often introduced the various co-conspirators to each other.[5] Even the entities themselves overlapped and were interconnected,

[5] A conspirator need not have participated in all aspects of a conspiracy in order to be liable as a member. *Blumenthal*, 332 U.S. at 556-57; *see United States v. Neresian*, 824 F.2d 1294, 1303 (2d Cir. 1987).

as iGate moved from a deal with Nigerian Company A to a deal with W2-IBBS and Nigerian Company B, in which W2-IBBS stood in the shoes of Nigerian Company A to a certain degree -- all the while iGate was making payments to ANJ for Defendant Jefferson and Family Member 1's benefit.

In the end, it is appropriate to allow a jury to decide whether this evidence -- and the other testimonial and documentary evidence that the government will present at trial -- is enough to establish the existence of a single conspiracy as charged in Count One of the Indictment. After the jurors have heard the evidence and before they retire to deliberate, they will be properly instructed by this Court on the elements of the offense, the factors to consider in evaluating the evidence, and the burden of proof. In fact, if requested by the defendant and deemed proper by this Court based on the facts adduced at trial, this Court may also charge the jury with an instruction concerning multiple conspiracies.[6] But to permit Defendant Jefferson, at this juncture, to challenge the quality and quantity of the evidence in a charging document that is, by its very nature, supposed to be merely a concise statement of just "the essential facts constituting the offense charged," would improperly invade the province of the jury and run counter to clear precedent in the Fourth Circuit. For these reasons, Defendant Jefferson's motion to dismiss Count One should be denied.

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[6] A multiple conspiracy instruction is not required unless the proof at trial demonstrates that the defendant was involved only in "separate conspiracies *unrelated* to the overall conspiracy charged in the indictment." *United States v. Kennedy*, 32 F.3d 876 (4th Cir. 1994) (emphasis in original) (quoting *United States v. Castaneda-Cantu*, 20 F.3d 1325, 1333 (5th Cir. 1994)); *United States v. Mills*, 995 F.2d 480, 485 (4 Cir. 1993) ("A court need only instruct on multiple conspiracies if such an instruction is supported by the facts.").

III. The Allegations Contained in Count Two Are Sufficient to Establish a Violation of Title 18, United States Code, Section 371

Similar to Count One of the Indictment described above, Count Two also alleges a conspiracy to violate laws of the United States in violation of Title 18, United States Code, Section 371. Contained within that count is the appropriate statutory charging language alleging that Defendant Jefferson sought to commit two offenses against the United States: (a) soliciting bribes (18 U.S.C. § 201(b)(2)(A)); and (b) depriving citizens and the United States House of Representatives of Defendant Jefferson's honest services by wire fraud (18 U.S.C. §§ 1343 and 1346). Ind. ¶ 141. This conspiracy is also properly pled as a dual-object conspiracy. *Bolden*, 325 F.3d at 492; *Braverman*, 317 U.S. at 52-53. Just as with Count One, Count Two also contains a detailed description of the nature and purpose of the conspiracy, the manner and means by which Defendant Jefferson and others sought to carry out the conspiracy, and more than fifty of the overt acts undertaken in furtherance of it. Ind. ¶¶ 142-44, 145-51, 152-205.

Unlike Count One, Count Two does not name any of the co-conspirators by name in the charging language of Paragraph 141. This in no way makes the conspiracy "vague" as claimed by Defendant Jefferson. Def.'s Mem. at 4. Indeed, a defendant "may be indicted and convicted despite the names of his co-conspirators remaining unknown, as long as the government presents evidence to establish an agreement between two or more persons." *United States v. Rey*, 923 F.2d 1217, 1222 (6th Cir. 1991); *United States v. Martinez*, 96 F.3d 473, 477 (11th Cir. 1996); *United States v. Nason*, 9 F.3d 155, 159 (1st Cir. 1993); *United States v. Allen*, 613 F.2d 1248,1253 (3d Cir. 1980). Nevertheless, the identities of most of the co-conspirators in Count Two are made clear in both the manner and means section and the plethora of overt acts alleged. These coconspirators include

Family Member 2, Businessperson BC, Businessperson DEF, Businessperson G, and Lobbyist A. *See, e.g.*, Ind. ¶¶ 145, 154, 172, 178, 188-89, 198. The government confirmed this fact by letter to Defendant Jefferson. Because the Indictment clearly alleges that Defendant Jefferson conspired with these aforementioned individuals, and others, to violate the federal laws described in Count Two, this count also sufficiently alleges a conspiracy under Section 371. *See Carr*, 582 F.2d at 244; *Summers*, 11 F.2d at 584.

In light of the properly pled allegations in Count Two, Defendant Jefferson does not even purport to claim that it fails to contain allegations that constitute the crimes charged. As such, the motion should be denied. *See Brandon*, 150 F. Supp. 2d at 885. Nevertheless, Defendant Jefferson does argue, as he did with regard to Count One, that Count Two "describes a string of distinct, similar schemes rather than a single agreement." Def.'s Mem. at 2. In support of this claim, Defendant Jefferson relies on the seminal case of *Kotteakos v. United States*, 328 U.S. 750 (1946), which discusses a classic "hub-and-spoke" conspiracy. Defendant Jefferson then proceeds to argue that, in essence, the conspiracy charged in Count Two is "a wheel without a rim." *See Dickson v. Microsoft Corp.*, 309 F.2d 193, 203-04 (4th Cir. 2002). As discussed in detail above, it is clear in the Fourth Circuit that this issue is one of fact for the jury to decide. *Bollin*, 264 F.3d at 405; *see also Hunter*, 1998 WL 887289 at *4; *Harris*, 39 F.3d at1267; *Banks*, 10 F.3d at 1051; *Crockett*, 813 F.2d at 1317 *Urbanik*, 801 F.2d at 695.

Besides being premature, Defendant Jefferson is wrong on the facts and the law. Defendant Jefferson omits key allegations presented in the Indictment and misinterprets the law in his quest to carve Count Two into six separate mini-conspiracies. As an initial matter, nowhere in Defendant Jefferson's entire motion does he mention Family Member 2. *See generally* Def.'s Mem. 1-15. Such

an absence is curious given that this co-conspirator: (a) is a family member of Defendant Jefferson; (b) signed contracts that conceal the illegal nature of the scheme on behalf of various family-controlled companies, (c) was mentioned nineteen times in Count Two; (d) was involved in each business deal; and (e) was contained in the government's letter to counsel listing co-conspirators in Count Two. Defendant Jefferson also deliberately ignores that each business person led to the next.[7] Lastly, Defendant Jefferson gives short shrift to the clearly defined common plan: in each instance, Defendant Jefferson solicited bribes in exchange for performing official acts and established a scheme in which the bribes were to be funneled through Family Member 2 and a shell company to conceal the illegal nature of the scheme. Under these facts, all of which are contained on the face of the Indictment, this conspiracy clearly passes muster under both *Kotteakos* and *Dickson*.

In the Fourth Circuit, generally "[a] single conspiracy exists where there is one overall agreement, or one general business venture. Whether there is a single conspiracy or multiple conspiracies depends upon the overlap of key actors, methods, and goals." *Squillacote*, 221 F.3d at 574. The overlap of key actors, methods, and goals in Count Two is stark to say the least. Indeed, even though it is legally unnecessary, almost every single conspirator in this conspiracy knew each other, either through in-person meetings, telephone conversations, or word of mouth. *Banks*, 10 F.3d at 1054; *Crockett*, 813 F.2d at1317; *Heinemann*, 801 F.2d at 92 n.2; *United States v. Friedman*, 854

[7] The first businessperson solicited by Defendant Jefferson for a payment to Family Member 2 was Businessperson DEF. Ind. ¶¶ 152-161. Businessperson DEF ultimately referred one of the business deals on to Businessperson G, describing it as "wired." Ind. ¶ 172. Defendant Jefferson then solicited Businessperson G to pay bribes through Family Member 2, which Businessperson G agreed to do. Ind. ¶¶ 173-74, 177-78. Businessperson G involved Lobbyist A in that deal and others. *See* Ind. ¶¶ 173, 182-87. Lobbyist A then introduced Businessperson BC to Defendant Jefferson, who then solicited bribes from Businessperson BC through Lobbyist A to be paid to Family Member 2 and later another family member, and in each instance, Businessperson BC agreed to pay those bribes. *See* Ind. ¶ 188-204.

F.2d at 562. Moreover, Defendant Jefferson's suggestion that the allegations within Count Two about several business deals means that Count Two cannot allege a single conspiracy is incorrect. *United States v. McCoy*, 919 F.2d 139, 1990 WL 190498, at *5 (4th Cir. Dec. 20, 1990) ("a finding of a master conspiracy with sub-schemes does not constitute a finding of multiple, unrelated conspiracies") (quoting *United States v.Smith*, 789 F.2d 196, 200 (3d Cir. 1986)); *see also United States v. Lee*, 359 F.2d 194 (3d Cir. 2004); *United States v. Patterson*, 819 F.2d 1495, 1502 (9th Cir. 1987) (holding that "a single conspiracy may include subgroups or subagreements"); *Heinemann*, 801 F.2d at 92 n.2; *United States v. Consolidated Packaging Corp.*, 575 F.2d 117, 128 (7th Cir. 1978) (government need not proceed "piecemeal" with numerous lesser conspiracies when the over-arching conspiracy can be established); *United States v. Perez*, 489 F.2d 51, 63 (5th Cir. 1974) (series of staged accidents with different participants considered part of same scheme).

As with Count One, the government is confident that the evidence, both as alleged in the Indictment and to be presented at the time of trial, will convince a jury beyond a reasonable doubt of the existence of a single conspiracy in which Defendant Jefferson was a knowing participant with Family Member 2 and others. In the end, however, whether the conspiracy charged in Count Two is a single conspiracy, as alleged by the government, or is a series of six separate mini-conspiracies, as alleged by Defendant Jefferson, is an issue of fact for the jury to decide aided by the instructions that this Court will provide prior to deliberations. Because Defendant Jefferson's motion provides no basis on which to find the allegations contained within Count Two to be insufficient as a matter of law, the instant motion should also be denied as it relates to Count Two.

CONCLUSION

WHEREFORE, the government respectfully requests that the Court deny this motion.

Respectfully submitted,

Chuck Rosenberg
United States Attorney

By: /s/

Mark D. Lytle
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: 703-299-3700
Fax: 703-299-3981
Mark.Lytle@usdoj.gov

/s/

Rebeca H. Bellows
Assistant United States Attorney
Attorney for the United States
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: 703-299-3700
Fax: 703-299-3981
Becky.Bellows@usdoj.gov

/s/

Charles E. Duross
Special Assistant U.S. Attorney
Attorney for the United States

United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: 703-299-3700
Fax: 703-299-3981
Charles.Duross@usdoj.gov

CERTIFICATE OF SERVICE

I certify that on September 28, 2007, I served a copy of the foregoing motion using the CM/ECF system to:

Robert P. Trout, Esquire
Amy Berman Jackson, Esquire
Gloria B. Solomon, Esquire
Trout Cacheris, PLLC
1350 Connecticut Avenue, N.W.
Suite 300
Washington, D.C. 20036
Facsimile: (202) 464-3319

/s/
Mark D. Lytle
Assistant United States Attorney
United States Attorney's Office
2100 Jamieson Avenue
Alexandria, VA 22314
Phone: 703-299-3768
Fax: 703-299-3981
Mark.Lytle@usdoj.gov